IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

MACA.No. 696 of 2006()

OPMV.1949/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANTS/PETITIONERS
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1. KUTTAN (DIED), KIZHAKKUMBRI HOUSE,
   AYYANTHOLE P.O.

2. OMANA, W/O. KUTTAN, KIZHAKKUMBRI HOUSE,
   P.O.AYYANTHOLE.

3. SAVITHRI, 26 YEARS, W/O. SHAJU,
   KIZHAKKUMBRI HOUSE, P.O.AYYANTHOLE, THRISSUR.

4. SHAHUL, S/O. SHAJU, 10 YEARS,
   KIZHAKKUMBRI HOUSE, AYYANTHOLE P.O., THRISSUR,
   REP. BY MOTHER, SAVITHRI.

5. SHABU, S/O. SHAJU, 6 YEARS,
   KIZHAKKUMBRI HOUSE, AYYANTHOLE P.O., THRISSUR,
   REP. BY MOTHER SAVITHRI.

6. SANISHA, D/O. SHAJU, 5 YEARS,
   KIZHAKKUMBRI HOUSE, AYYANTHOLE P.O., THRISSUR,
   REP. BY MOTHER, SAVITHRI.

7. SURESH K.K., AGED 31 YEARS.

8. MINI K.K., W/O. VENU, CHENBAD HOUSE,
   ENGADIYOOR, THIRUMANGALAM.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS:
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1. RAMADAS, S/O. AYYAPPANKUTTY,
   ATTUVALAPPIL HOUSE, KURIAZHAKKAL HOUSE,
   AYYANTHOLE P.O.

2. JOY, S/O. ANTONY, KOLANGARA HOUSE,
   KARATT LANE, DANNIYAM KULANGARA, AYYANTHOLE.
   (R2 deleted from the party array as per order
   in I.A.No.1648/2006 dtd.29.8.2006)

3. UNITED INDIA INSURANCE CO. LTD.,
   KURUPPAM ROAD, TRICHUR.

BY ADV. SRI.C.D.DILEEP
SRI.J.MATHAPPAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT 28.2.2007 PASSED THE

FOLLOWING:

P.R.RAMAN & S.SIRI JAGAN, JJ.

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M.A.C.A. No.696 of 2006

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Dated this the 28th day of February, 2007

J U D G M E N T

Siri Jagan, J.:

This appeal is directed against the award of the Motor Accidents Claims Tribunal, Thrissur, in O.P(M.V).No.1949/2000. The claimants are the appellants. The appellants are the legal heirs of late Kuttan who died in an accident involving a goods autorickshaw in which the said Kuttan was a passenger. The Tribunal found that the accident occurred on account of the rash and negligent driving of the driver of the autorickshaw and therefore, the legal heirs of Kuttan are entitled to compensation amounting to Rs.2,76,000/- with interest at the rate of 6 per cent and costs of Rs.5000/-. Although the third respondent herein admitted a valid policy in respect of the vehicle

involved in the accident, they took up a contention that since the deceased Kuttan was a gratuitous passenger in a goods vehicle, the insurance company is not liable to indemnify the owner of the vehicle, since the policy is one under Section 147 of the Motor Vehicles Act, and no additional premium has been paid in respect of passengers. This contention of the insurance company was accepted by the Tribunal and the insurance company was absolved from liability directing the owner and driver of the autorickshaw to satisfy the award. That part of the award absolving the insurance company from the liability to pay the compensation amount is under challenge in this M.A.C.A. at the instance of the claimants-appellants.

2. The contention of the appellants is that the findings of the Tribunal are against the facts and evidence in this case since the said Kuttan was accompanying the goods in the autorickshaw as an agent of the owner of the goods and therefore, he squarely comes within the purview of Section 147 of

the Motor Vehicles Act, 1988, as a result of which the insurance company is liable to pay compensation awarded.

3. As is to be expected, the insurance company alone contests the appeal. The insurance company would strenuously argue that apart from the interested testimony of PW1, who is one of the claimants in the O.P(M.V), there is no independent evidence to prove that late Kuttan was an agent of the owner of the goods carried in the vehicle and as such, the finding in the award is in accordance with the evidence adduced before the Tribunal and therefore, no interference on the findings of the Tribunal by this court is warranted.

4. We have considered the rival contentions in detail.

5. At the outset, we must note that the specific contention of the claimants before the Tribunal was that the autorickshaw was carrying fire wood to a burial ground for the purpose of cremation of the father of one Biju, who was a

friend of late Kuttan and the said Kuttan was accompanying the fire wood to the burial ground as an agent of the said Biju. This case of the claimants is specifically stated in the award itself. One of the claimants, viz. PW1-Savithri, who is the third appellant herein, had also deposed before the Tribunal to the above effect. Of course there is no corroborating oral or documentary evidence to support the version of the claimants and PW1 was not an eye witness. But it is not in dispute before us that the autorickshaw was carrying fire wood to a burial ground. The fact that the father of one Biju died and it was for the cremation of father of Kuttan's friend, Biju, that the fire wood was being transported is also not in doubt. The very fact that the said Kuttan died in the accident would prove that Kuttan was accompanying the fire wood in the autorickshaw. Of course, the insurance company would contend that apart from Kuttan, there were some other persons also in the autorickshaw and therefore, it cannot

be presumed that all of them were accompanying the goods as agents of the owner of the fire wood. The very fact that the definite case of the appellants in this case is that late Kuttan was accompanying the fire wood as agent of the owner of the fire wood, and that the others have not pursued any such contention, would deter us from accepting the contention of the insurance company. The logical conclusion from the above said set of facts would be that the late Kuttan was actually accompanying the fire wood as an agent of Biju for whose purpose of cremation of the body of his late father the fire wood was being transported to the burial ground. Therefore, we have absolutely no hesitation to hold that the preponderance of probability is in favour of the appellants to the effect that the late Kuttan was actually accompanying the fire wood transported in the autorickshaw as an agent of the owner of the fire wood so transported. Since Section 147 of the Motor Vehicles Act, 1988 requires a policy under that

section to cover the owner or the agent of the owner accompanying the goods transported to be covered by the policy issued under that section, it goes without saying that the owner of the autorickshaw who is the insured under the policy admitted by the insurance company is liable to be indemnified by the insurance company by virtue of the policy in terms of Section 147. The natural consequence of the said finding would be that the insurance company would be liable to pay to the appellants the compensation awarded by the Tribunal for the death of late Kuttan. Since, apart from the above contentions, which we have repelled as above, the insurance company has not raised any other contentions either before the Tribunal or before this court, we are of opinion that this appeal is liable to be allowed. We do so. Accordingly, we hold that the 3rd respondent insurance company is liable to satisfy the award in O.P(MV).No.1949/2000 and to pay the amounts awarded by the Tribunal to the appellants herein as directed in the award.

They shall deposit the amount within one month from the date of receipt of a copy of this judgment, the disbursement of which to the claimants shall be as per the conditions in the award. However, we do not make any order as to costs in this appeal.

Sd/-
P.R.RAMAN, JUDGE

Sd/-
sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.